

1721734 (Migration) [2019] AATA 522 (12 February 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

CASE NUMBER: 1721734

MEMBER: Kira Raif

DATE: 12 February 2019

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Partner (Migrant) (Class BC) visa.

Statement made on 12 February 2019 at 7:36am

CATCHWORDS

MIGRATION – Partner (Migrant) (Class BC) visa – Subclass 100 (Spouse) – genuine and continuing relationship — non-judicially determined claim of family violence – opinion sought from independent expert – emotional and psychological harm – intention to establish joint household – family violence occurred after relationship ceased – credibility issues – inconsistent evidence – decision under review affirmed

1.

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 359A, 65

Migration Regulations 1994 (Cth), rr 1.21, 1.22, 1.23, 1.24, 1.25; Schedule 2, cl 100.221

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

Application for review

2. This is an application for review of a decision made by a delegate of the Minister for Immigration on 7 September 2017 to refuse to grant the applicant a Partner (Migrant) (Class BC) visa under s.65 of the *Migration Act 1958* (the Act).
3. The applicant is a national of Fiji, born in [Month, Year]. He applied for the visa on 27 November 2014 on the basis of his relationship with his sponsor. The delegate refused to grant the visa on the basis that the applicant did not meet cl.100.221 because the applicant's relationship with the sponsor had ended and the delegate was not satisfied the applicant met any of the alternative criteria for visa grant. The applicant seeks review of the delegate's decision.
4. The applicant appeared before the Tribunal on 26 February 2018, 12 July 2018 and 31 January 2019 to give evidence and present arguments. The Tribunal took evidence from the applicant's friend in the last hearing. The applicant was represented in relation to the review by his registered migration agent. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

Relevant law

5. At the time the application was made, Class BC contained Subclass 100. The criteria for the grant of this visa are set out in Part 100 of Schedule 2 to the Migration Regulations 1994 (the Regulations).
6. Relevantly to this matter the primary criteria include cl.100.221 which requires the applicant to be the spouse or de facto partner of the sponsor, unless the relationship has ceased and certain circumstances exist. These include that the applicant, or a member of the family unit, has suffered family violence committed by the sponsor: cl.100.221(4)(b), (c)(i). The applicant claims this occurred in this case.
7. In the present case, the applicant claims the relationship with the visa sponsor has ceased, and he has been the victim of family violence.
8. Under r.1.23 of the Regulations, a person is taken to have suffered or committed family violence if there is evidence tested before a court; or the visa application includes a non-judicially determined claim of family violence, and either the Minister (or the Tribunal on review) is satisfied that the alleged victim has suffered relevant family violence or an opinion of an independent expert has been given that the alleged victim has suffered relevant family violence. Relevant family violence is defined in r.1.21. The Tribunal notes that the violence, or part of the violence must have occurred during the relationship: r.1.23(3), (5), (7), (12), (14).
9. In the present case the applicant is seeking to establish family violence on the basis of a non-judicially determined claim of family violence.

Has a claim of family violence been made under the Regulations?

10. The applicant in this case is seeking to rely on evidence referred to in r.1.24 – namely, a statutory declaration under r.1.25 and evidence of a type and number specified by the Minister for these purposes.

11. A statutory declaration under r.1.25 must be made by the spouse or partner of the alleged perpetrator. If the alleged victim is the spouse or partner, the statutory declaration must set out the allegation of family violence, name the person alleged to have committed the relevant family violence and if the *conduct* was not directed at the spouse or partner, name the person to whom it was directed and their relationship with the deponent: r.1.25(2). There are different requirements if the family violence is alleged to have occurred to another person: r.1.25(3).
12. The applicant provided to the Tribunal his own statutory declaration, as well as the medical report and a statutory declaration from a psychologist, as well as other materials. The Tribunal is satisfied that the evidence presented meets the requirements of r.1.24. As such, a non-judicially determined claim of family violence has been made under r.1.23.

Has the applicant suffered family violence?

13. With respect to family violence, the applicant told the Tribunal that from March or April 2017 he felt he was suffering psychologically and he was not able to concentrate on his job. The applicant said that his wife had issues with his mother and since he raised it with her, the sponsor became nasty and rude to him. She threatened that she would self-harm and blame it on him and would get the police involved. She also threatened to deport him and told him that he was only in Australia because of her and she accused him of having affairs. The applicant said these things affected him emotionally. The applicant said that although there was no physical violence, he was fearful when the sponsor threatened self-harm and said she would blame it on him and that she would get him in trouble with the police. The applicant said he did not inform the Immigration Department about the problems in the relationship. The applicant said that he did tell the person from the Immigration Department that they had minor issues. He conceded that he did not raise the claim of family violence to the Department but said he was not in the right frame of mind.
14. The representative argues that even though the sponsorship was withdrawn in February 2017, the applicant was unaware of that (there is documentary evidence of ongoing social engagement after that period) and that provides evidence that the relationship was ongoing despite the withdrawal of sponsorship. The applicant said that he was under the impression that the relationship was ongoing. The representative notes that there is no obligation to inform the Department of relationship difficulties. However, the Tribunal considers it problematic that the applicant's claim of family violence was raised for the first time in his recent dealings with the Tribunal. The applicant provided two detailed written submissions to the delegate in response to the Natural Justice letters. In his communications with the Department the applicant claimed that the relationship has not broken down and that he and the sponsor continue to communicate with each other. The applicant outlined the circumstances of his relationship with the sponsor in some detail. The applicant made no mention of the family violence in his dealings with the Department. Indeed, the first mention of the family violence was made in response to the Tribunal's s.359A letter. The Tribunal acknowledges the representative's argument that it is not necessary to inform the Department about relationship problems and the applicant believed the relationship to be ongoing, however, the Tribunal considers that in the circumstances where the applicant claims he had been subjected to family violence for months and in the context of the applicant seeking a Partner visa on the basis of a mutually committed relationship, the applicant did have an obligation to provide a truthful representation of his relationship when dealing with the Department. In the Tribunal's view, if the applicant was truthful in his claims, he would have referred to the family violence when describing his relationship to the delegate. The Tribunal has formed the view that the applicant is not a person of credibility.
15. The applicant's evidence to the Tribunal is that the medical evidence establishes he was suffering from depression at the time and he was not in the right frame of mind to inform the

Department. The Tribunal does not accept that evidence. The Tribunal notes that the applicant's mental state did not prevent him from dealing with daily aspects of his life. The applicant was able to engage with the Tribunal shortly after his primary application was refused. The Tribunal does not accept that the applicant's health was so poor that he was incapable of informing the Department about his relationship, or instructing someone else to do it on his behalf. The Tribunal has formed the view that the claim of family violence is a recent invention.

16. Given the timing of this claim, and having considered the applicant's oral and written evidence, the Tribunal was not satisfied for the purposes of r.1.23 that the applicant has suffered relevant family violence. In accordance with that regulation, the Tribunal sought the opinion of an independent expert. On 31 May 2018 the independent expert (IE) provided an opinion that the applicant had not suffered relevant family violence. The Tribunal wrote to the applicant pursuant to s.359A of the Act inviting his comments on that information. In response, the applicant raised some concerns about the validity of the IE report and the applicant was invited to a further hearing to give evidence on the matter. On 10 July 2018 the applicant provided a further submission to the Tribunal outlining concerns with the IE assessment and claiming that the psychologist who conducted the assessment lacks relevant experience in assessing family violence matters. On 11 July 2018 the applicant provided further submissions, including statements from his friends. (No explanation is offered by the applicant's representative for the late submission of documents, nor the failure to comply with paragraph 5.1 of the AAT Practice Directions on Migration and Refugee Matters.)
17. In oral evidence to the Tribunal on 12 July 2018 the applicant outlined several concerns with the IE report. At the applicant's request, the Tribunal agreed to arrange a further IE assessment. On 3 December 2018 the Tribunal received the IE report indicating that the applicant did suffer family violence.
18. The Tribunal is satisfied that the opinion is authorised by the Regulations, in that it is provided by an independent expert who is a person suitably qualified to make the assessment, is an employee of an organisation specified for this purpose, and was properly made. Despite the Tribunal's considerable concerns about the applicant's credibility and the veracity of his claims, under r.1.23 the Tribunal is required to take as correct an independent expert's opinion, properly made.

Did the violence occur during the relationship?

19. Where the independent expert's opinion is that a person has suffered relevant family violence, at least part of the violence that led to that opinion must have occurred while the married or de facto relationship existed.
20. The IE found that the only threat that constituted family violence occurred after the relationship ended. In his declaration of 19 December 2018 the applicant states that the IE erred in stating that the relationship ended in 2015. The applicant claims he had never stated that in the documents he provided to the Tribunal. The applicant refers to the psychologist's report which refers to the relationship being in existence until November 2017. The Tribunal is mindful that the role of the independent expert is to make an assessment on the existence of family violence, not on the existence of a spousal relationship between the applicant and the sponsor. That is the role of the Tribunal. While the Tribunal is bound by a valid finding of the IE in relation to the family violence, the Tribunal is not bound by the IE's finding about the existence, or the duration of the relationship. The Tribunal places no weight on the IE finding on the issue. In the same way, the Tribunal is not bound by any finding or assessment made by the psychologist, employed and paid for by the applicant, about the existence and the duration of the relationship and the date of its ending. Such an assessment is evidence

before the Tribunal, in the same way as the finding of the independent expert, but it is up to the Tribunal to determine the weight to be given to the assessment and, ultimately, it is for the Tribunal to determine whether the applicant did have a spousal relationship with the sponsor and when that relationship ended. The Tribunal does not consider the psychologist's assessment about the duration of the relationship to be probative evidence and does not give it any weight in determining when the relationship broke down.

21. In the first Tribunal hearing the applicant told the Tribunal in oral evidence that before he came to Australia he travelled to Australia three times and on the third trip they decided for him to relocate to Australia. The applicant said that after he came to Australia, he stayed with his sister and the sponsor stayed with her family. The applicant said that before he came to Australia, they planned that his partner would come to Australia first and then find suitable accommodation but his partner could not find a paid job for some time.
22. The applicant told the Tribunal on 31 January 2019 that before the sponsor came to Australia in 2014, she undertook to find a job and planned to find an apartment for both of them. After he arrived in Australia, his partner could not get a permanent job and she was working as a volunteer, so it was difficult to start looking for apartments. Because they had no savings, it was not possible to find an apartment.
23. The applicant claims he obtained a job in January 2016 which he held until April 2016. The applicant said they had difficulty getting an apartment in that period but the Tribunal is not satisfied it would not have been possible for them to have an apartment when the applicant had income. His evidence is that he had some savings, albeit limited, and both also had family members in Australia who they may have accessed for financial help. The Tribunal accepts that they did not want to inconvenience family members but the Tribunal does not accept it would not have been possible for the couple to gain the financial support to find joint accommodation. The applicant agreed that both he and the sponsor had savings but he said it would be difficult to maintain a joint household before they had stable jobs. The applicant said it was a mutual decision to live separately.
24. The applicant said that although they did not live together in Australia, they did live together in Fiji from the time they married in May 2014 until December 2014 when the sponsor came to Australia. The applicant said the sponsor was granted permanent residence before they married but he was unaware whether the sponsor informed the Department about the changes in her circumstances and the marriage before she came to Australia. This may suggest that the couple has not been truthful in their dealings with the Department.
25. The Tribunal finds that the couple had not lived together since the applicant travelled to Australia and have not established a joint household. The Tribunal acknowledges the representative's submission that there is no need for cohabitation in order to establish the existence of a genuine relationship and it is sufficient that the parties had the intention to re-establish the cohabitation but in the circumstances of this case, the Tribunal is not satisfied that the couple genuinely had the intention to establish a joint household. Essentially, the Tribunal is not satisfied that they were precluded from doing so by financial restrictions and lack of paid employment. The Tribunal finds that they did not utilise the opportunity that they did have, including savings and family support, and did not find a joint accommodation in the four months when the applicant did have a paid job. The applicant claims he believed the relationship was ongoing until late 2017, so they had ample time to make arrangements to live together and the Tribunal is not satisfied they had taken reasonable steps to establish a joint household. The Tribunal is not satisfied the applicant and the sponsor intended to establish a joint household.
26. With respect to the finances, the applicant told the Tribunal that since coming to Australia, they did not have joint financial arrangements because they were living separately. His wife

suggested that once they move in together, they would share their finances. The applicant said that he brought some money with him but the money was in the account. The applicant said that the sponsor had her own income and paid her own expenses and relied on her sister to pay for her studies. The applicant said that they shared finances in Fiji but since he came to Australia, they did not share finances but they paid together when they met, for example for lunches and dinners and sight-seeing and movies. In his subsequent evidence to the Tribunal the applicant said that the sponsor took him clothes shopping when he came to Australia and once helped him pay a credit card bill. In the Tribunal's view, that is not sufficient. The applicant claims they had no money for the joint liabilities but the Tribunal's concern is with the expenses that they did have, which were not met through the sharing of resources.

27. The Tribunal is prepared to accept that the couple did spend money together during their outings but the Tribunal is not satisfied there was any other pooling of resources. The significant expenses – including living costs, education, accommodation, etc. – were paid for separately. The Tribunal is not satisfied that the couple pooled financial resources or shared daily household expenses.
28. The applicant told the Tribunal that he accepted the relationship was over when he received the divorce papers in November 2017. The applicant said that when he received the call from the Department in early 2017, he told them the relationship was not over and that they were still looking for an apartment to live together.
29. The applicant provided to the Tribunal a copy of the divorce application which shows the separation date as December 2014, before the applicant was granted the temporary visa and before his entry to Australia. The applicant explained to the Tribunal that his partner simply used the wrong date when she filed the document. However, the applicant claims that even though the separation date was incorrect, he did not do anything about it. The applicant said he mentioned it to the bailiff who served him with the divorce papers but he did not correct the dates with the court and did not contest the divorce and did not do anything else about it. The Tribunal generally considers formal papers such as a divorce application filed with the court to be probative evidence and there is no reason the applicant's present evidence should be given greater weight than the court documents specifying an entirely different date of the relationship ending. Although it was the sponsor and not the applicant who prepared the divorce papers, the applicant did nothing to correct what he claims to be an error in the dates. It is problematic in the Tribunal's view, that the applicant was content to rely on what he now claims to be false information in the divorce application because he made the decision not to contest the divorce. If the separation date in the divorce application was in fact incorrect, the applicant's reliance on it suggests he is not a person of credibility. The Tribunal does not consider that document should be disregarded in favour of the applicant's oral evidence. The divorce application suggests the parties separated in late 2014 and the relationship ended in early 2015, well before the applicant's entry to Australia. The applicant's claim that the divorce application contains false information about the timing of the relationship, and his failure to correct that information, shows that the applicant and the sponsor were willing to be untruthful in their dealings with government agencies when they decided it suited their needs.
30. The applicant said that since he came to Australia, they used to see each other four to five times a week and socialised together. The Tribunal is prepared to accept that there was some degree of socialising together, although the nature of these social activities (movies, sight-seeing, dinners, etc.) may not necessarily represent a marital relationship. The Tribunal also acknowledges the statement from the applicant's sister of 25 January 2019 confirming the existence of the relationship between the applicant and the sponsor. The applicant presented other statements to the Tribunal. The Tribunal is prepared to accept that the couple represented themselves to at least some friends and relatives as being in a

relationship and undertook joint social activities. The Tribunal acknowledges that other third parties provided statements expressing the belief that the relationship was a genuine one, although most of these refer to the period before the applicant's entry to Australia.

31. With respect to their plans, the applicant told the Tribunal that they planned to move to their own apartment but found it difficult to find paid employment. The couple had not lived together. They had limited social activities that, in the Tribunal's view, were not reflective of a spousal relationship. They do not appear to have made joint financial decisions or commitments. There was very limited, if any, companionship and emotional support provided to each other and reliance on such support by the applicant and the sponsor. The Tribunal is not satisfied that after the applicant's entry to Australia, he and the sponsor viewed their relationship as a long-term one as the Tribunal has formed the view that they had made limited effort to be together. The Tribunal is not satisfied the couple viewed their relationship as a long-term one after the applicant's entry to Australia.
32. The applicant states in his declaration of 19 December 2018 that his relationship ended in November 2017 and not prior to that. He learned about the sponsorship withdrawal when he received the natural justice letter from the Department. The applicant stated that despite the withdrawal of sponsorship, he and the sponsor continued to contact each other and go out and discussed and sorted out their 'minor' differences. The applicant states that he provided evidence of the relationship at least until August 2017. He states that even though they had minor issues, that does not mean the relationship ended before November 2017. Otherwise his partner would not have contacted him in August 2017 or arranged a house inspection in July 2017 or helped him with the house search in March 2017. The applicant states that even though they lived separately, it was not a permanent separation and their intention was to live together. While the Tribunal accepts that it is a mutual commitment that defines the relationship rather than mere cohabitation, the Tribunal has formed the view that there is insufficient evidence that by mid-2017 the applicant's partner had any commitment to the relationship. In the Tribunal's view, the sponsor's withdrawal of sponsorship in early 2017 offers strong evidence that at that time, she was no longer committed to the relationship. The Tribunal accepts that the sponsor may have helped the applicant with various tasks, and the Tribunal has accepted that the couple socialised with each other until late 2017, but the definition of the 'spouse' in s. 5F requires other factors to exist and the Tribunal is not satisfied they existed in the present case. The combination of the couple's decision not to live together, separation of their finances and the sponsor's advice to the Department about sponsorship withdrawal offer strong evidence that the relationship was over by early 2017.
33. The applicant claims the separation was temporary and any differences were minor and the intention was to be together but it is only the applicant's evidence which is not supported by the evidence of his spouse. The Tribunal has not had the opportunity to question the sponsor and test her evidence and in the circumstances where the Tribunal has found the applicant not to have been truthful at least in some aspects of his claims, the Tribunal does not accept the applicant's evidence that the sponsor remained committed to the relationship until late 2017.
34. Further, if the applicant's evidence about the family violence is to be accepted, the Tribunal does not consider that multiple threats towards the applicant and threats to withdraw sponsorship can properly be characterised as 'minor' differences.
35. The applicant argues that the Tribunal cannot rely on the evidence of his former partner because she is not a credible person. The Tribunal makes its findings on the entirety of the evidence before it and not on the evidence of the sponsor alone. However, the Tribunal also formed the view, for the reason stated above, that the applicant himself is not a person of credibility. The Tribunal is of the view that the applicant's claims are somewhat opportunistic and that he has not been truthful in his dealings with the Department. Neither was the

applicant truthful in his dealings with the Family Court as he claims the separation date on the divorce application was false and he did nothing to correct it. The Tribunal will not rely exclusively on the applicant's own evidence that the relationship existed until the end of 2017.

36. The Tribunal has had regard to the circumstances of the relationship. From the time of the applicant's entry to Australia, the couple were not living together. The applicant claims that they had searched for a place to live together until mid-2017. As evidence in support of that claim, the applicant presented to the Tribunal one email from a real estate agent to his partner advising of a property open for inspection. Nothing in that email supports the applicant's claim that he and the sponsor were looking for apartments together or that their intention was to live together. The evidence simply indicates that the sponsor made inquiries about an apartment. She may have done so on behalf of the couple or for her own benefit. It may have been their intention to live together or it may have been that the apartment was to be used by the applicant or the sponsor alone. The presented evidence is not sufficient to satisfy the Tribunal that the couple continued to look at the apartments together with the intention of living together. For the reasons stated above, the Tribunal does not accept that the applicant and the sponsor were unable to establish a joint household earlier or that they had a genuine intention of doing so. They did not share housework, domestic responsibilities or responsibilities for any children. There is very little evidence that by that time they shared finances and the applicant's oral evidence in the first Tribunal hearing indicates that their finances were completely separate but they may have shared funds when socialising together. In the last Tribunal hearing the applicant states that they could not form joint financial obligations because they had no money but the Tribunal's concern is not with the absence of joint assets. The applicant and the sponsor must have had some expenses and there is no evidence that whatever those expenses were, they were shared or that the couple pooled their resources or that they had meaningful conversations about the sharing of finances. The applicant claims that he and the sponsor went out together but even if that was the case, the Tribunal does not consider that occasional outings and payments for dinners and social activities are sufficient to show that the couple pooled their resources or shared daily expenses.
37. There is also little evidence before the Tribunal that by mid-2017 others believed the applicant and the sponsor to be in a genuine spousal relationship or that the couple represented themselves as being in such a relationship. The Tribunal acknowledges the various statements and the oral evidence of Mr [A]. Mr [A] told the Tribunal that he saw the couple socialise together by mid-2017 but he also said that he had limited interactions with the sponsor and would not be aware of her views on the relationship. In such circumstances, while the Tribunal accepts that Mr [A] believed the couple continued their relationship to at least mid-2017, the Tribunal does not accept that his views can be taken as probative evidence that there existed mutual commitment to the relationship at that time.
38. The Tribunal is also mindful of the applicant's evidence that by mid-2017 he was experiencing family violence and felt fearful as a result. The applicant could not explain to the satisfaction of the Tribunal why he and the sponsor would be looking at properties together at that time if he was fearful for his safety and well-being. In the Tribunal's view, if the applicant's claims were true, the existence of the threats and the resultant fear for one's safety and well-being cannot be classified as 'minor arguments' as the applicant now claims.
39. The Tribunal notes that many of the events the applicant describes in his evidence to the Tribunal, including those described in his declaration of 19 December 2018, relate to events that occurred prior to mid-2017. The Tribunal accepts that the applicant and the sponsor had some interactions until the middle of 2017, that the sponsor helped the applicant with a job search and they considered a house search, that they went out together, participated in some social activities and had other interactions. The Tribunal acknowledges various

documentary evidence of the relationship presented to the Tribunal by the applicant. However, in the Tribunal's view, the nature and the level of the parties' interactions are not sufficient to satisfy the Tribunal that a genuine and a mutually committed relationship existed between them by mid-2017.

40. The applicant claims that if the Tribunal had concerns about his relationship, his claims of family violence would not have been referred to the IE. The Tribunal does not accept that argument. Firstly, the Tribunal expressly raised with the applicant in the course of the hearings the issue of his relationship. The applicant was put on notice that the relationship was at issue. Secondly, the referral to the IE does not presuppose a finding that there was a genuine relationship. Particularly, in this case where the IE formed the view about the family violence being limited to a particular incident, it is necessary for the Tribunal to determine whether that incident occurred during the relationship. It would not have been possible for the Tribunal to make that assessment prior to the IE findings about the timing of the family violence. Thus, even if the Tribunal formed the view that there was a genuine relationship between the applicant and the sponsor at some point in time, following the IE finding, the question became whether the family violence or part of it occurred during the relationship and the time the relationship ended became central.
41. The Tribunal has considerable concerns as to whether the applicant had a genuine relationship with the sponsor since his entry to Australia. The Tribunal is not satisfied that the applicant's relationship continued to exist by the time of the applicant's entry to Australia and certainly not by mid-2017.
42. Having regard to all the circumstances, the Tribunal is not satisfied that the applicant's relationship with the sponsor continued by mid-2017. The Tribunal is not satisfied that by mid-2017, the applicant and the sponsor continued to have a mutual commitment to a shared life as husband and wife to the exclusion of all others, that their relationship was genuine and continuing and that they lived together or not separately and apart on a permanent basis. The Tribunal finds that there was no spousal relationship between the applicant and the sponsor by mid-2017.
43. The IE found that the only threat that constituted family violence occurred in mid-2017. The Tribunal is not satisfied that by that time, the applicant was in a spousal relationship with the sponsor. As such, the Tribunal is not satisfied that the family violence occurred during the relationship. Accordingly, the Tribunal finds that the applicant is not taken to have suffered family violence committed by the sponsor for the purposes of r.1.22. The Tribunal is not satisfied the applicant meets cl.100.221(4).
44. The Tribunal notes the allegation received by the Department about the relationship, which the Tribunal discussed with the applicant in the course of the hearing. The allegation refers to the applicant not being in a genuine relationship with the sponsor and not living with the sponsor. The applicant denies that he did not have a genuine relationship but agrees that he did not live with the sponsor in Australia. The Tribunal places no weight on the allegation and its findings on the nature of the applicant's relationship with the sponsor are based on the applicant's own evidence and in no way rely on the information in the allegation. The Tribunal's finding is that such a relationship ended by mid-2017. The Tribunal considers the allegation irrelevant to this review.
45. The applicant's evidence to the Tribunal is that his relationship with the sponsor ended and they are formally divorced. The Tribunal finds that the applicant is not the spouse of the sponsor at the time of this decision. The Tribunal has found that the applicant has not suffered family violence because such violence did not occur during the relationship. There is no evidence that the sponsor has died or that the applicant has any responsibilities in relation to any children. The Tribunal is not satisfied the applicant meets cl.100.221.

Conclusion

46. Given the above conclusion that the claim of family violence has not been established, the applicant does not meet the requirements of cl.100.221(4)(b) and (c) for the grant of the visa. There is no evidence before the Tribunal that the applicant meets any of the alternative sub criteria. As the applicant does not meet an essential criterion for the visa, the Tribunal must affirm the decision under review.

DECISION

47. The Tribunal affirms the decision not to grant the applicant a Partner (Migrant) (Class BC) visa.

Kira Raif
Senior Member